

CHAPTER 13.6
DEPARTMENT OF JUSTICE REGULATIONS
FOR THE CERTIFICATION OF NON-EXEMPTED INDIVIDUALS WHO TAKE
FINGERPRINT IMPRESSIONS

Article 1. General.

§994. Title.

This chapter shall be known as the “Department of Justice Regulations for the Certification of Non-Exempted Individuals Who Take Fingerprint Impressions,” may be cited as such and will be referred to herein as “these regulations.”

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 11102.1, Penal Code.

§994.1. Scope.

The provisions of these regulations implement, interpret, and make specific the mandate in California Penal Code section 11102.1 which became effective January 1, 2003. The mandate requires the Department to certify individuals who take fingerprint impressions for criminal offender record information (CORI) clearances for employment, licensing, and certification purposes. Individuals who are law enforcement personnel, or who are state employees who have received training pertaining to applicant fingerprinting and have undergone a criminal offender record information background investigation are exempted from these regulations. These regulations also establish procedures for the application form, and for the issuance of the required certification and set forth appeal procedures if the application is denied or revoked.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 11102.1, Penal Code.

§994.2. Definitions of Key Terms.

(a) “Administrative Hearing Officer” means an individual designated by the Director to conduct any hearing required under these regulations.

(b) “Applicant Live Scan” means a system for the electronic submission of applicant fingerprints and the subsequent automated background check and response.

(c) “Attorney General” means the Attorney General of the State of California.

(d) “CDL or California Driver’s License” means a license to drive a vehicle issued by the California Department of Motor Vehicles, which may be used as evidence of identity, age, and residence.

(e) “CA ID or California Identification” means a form of identification issued by the California Department of Motor Vehicles, which may be used as evidence of identity, age, and residence.

(f) “CORI or Criminal Offender Record Information” means the same as defined in Penal Code section 13102.

(g) “Director” means the Director/Chief Information Officer of the Division of California Justice Information Services, Department of Justice, State of California.

(h) “DMV” means the California Department of Motor Vehicles.

(i) “DOJ” or “the Department” means the California Department of Justice.

(j) “Non-Exempted Individuals” means those individuals not exempted from the certification requirements of these regulations as specified in Penal Code section 11102.1 (a).

(k) “SSN” means the Social Security Number as issued by the United States Social Security Administration.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 17520, Family Code. Section 11425.30, Government Code. Sections 11102.1, 13102 and 13125, Penal Code.

Article 2. Qualifications and Application for Certification.

§994.3. Qualifications for Certification.

Every applicant for certification pursuant to these regulations shall meet the qualifications criteria as specified in Penal Code section 11102.1.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 11102.1, Penal Code.

§994.4. Application for Certification.

Any individual who desires to apply for certification under these regulations should contact the DOJ and request form BCIA 8372 (rev. 09/03) “Application for Certification for Non-Exempted

Individuals to Take Fingerprint Impressions.” The application form and a package of pre-certification materials will be forwarded.

The application form shall contain the following information:

(a) The full name, date of birth, address, including the city, county and zip code, and telephone number of the person applying for certification.

(b) The California Driver’s License number on a valid California Driver’s License issued by the DMV, or a California ID number on a valid identification card issued by the DMV.

(c) The SSN of the person applying for certification.

(d) A yes or no answer to the following questions. Except in item (1), in any case where a yes answer is given, an explanation must be provided in the space provided on the application:

(1) Are you a California resident?

(2) Have you ever used a name other than the one on this application?

(3) Have you ever been convicted by any court of a felony or misdemeanor offense in California or any other state?

(4) Have you ever been arrested in California or any other state and/or are you awaiting adjudication for any offense for which you were arrested?

(5) Have you ever been denied a professional license or had such license revoked, suspended, or restricted?

(6) Have you ever been adjudged liable for damages in any suit grounded in fraud, misrepresentation, or in violation of state regulatory laws?

(7) Have you ever failed to satisfy any court ordered money judgment including restitution?

(e) Applicant must sign under penalty of perjury and certify on the application to the following: “I certify that I have read the pre-certification materials provided by the DOJ. I certify under penalty of perjury under the laws of the State of California to the truth and accuracy of all statements, answers, and representations made in the foregoing application, including all supplementary statements.”

(f) All applications for certification must be notarized by a Notary Public appointed by the California Secretary of State.

(g) Misrepresentation or failure to disclose requested information on the application for certification is cause for denial or revocation of certification.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 17520, Family Code. Sections 11102.1 and 13125, Penal Code.

§994.5. Submission of Application, Fingerprints and Fees.

- (a) The applicant shall send a completed and notarized application to the DOJ.
- (b) The applicant shall have two sets of fingerprints taken either through the applicant live scan process or manually. The fingerprints must be taken by:
 - (1) A law enforcement agency,
 - (2) A state agency that provides fingerprinting services to the public, or
 - (3) The DOJ.
- (c) Manually rolled fingerprints must be submitted to the DOJ by the applicant along with his or her notarized application.
- (d) The applicant shall also submit with his or her notarized application, a check or money order in the amount of \$81.00 made payable to the “California Department of Justice” for the certification processing fee.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 11102.1, Penal Code.

Article 3. Certification Letter.

§994.6. Certification by the DOJ.

- (a) When the fingerprints have been processed and the application for certification has been approved, a letter will be sent to the applicant stating the application has been accepted and the applicant is certified. The letter will include a certification number. The letter and certification number will serve as confirmation that the person named has been certified by the DOJ to take fingerprint impressions of individuals for employment, licensing, and certification purposes.
- (b) The certification number assigned in (a) above will be required on all fingerprints submitted by the certified individual, whether submitted manually or electronically.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 11102.1, Penal Code.

§994.7. Duration of Certification.

Certifications issued pursuant to these regulations remain in effect for the lifetime of the individual certified or until they are surrendered, revoked, or suspended for cause.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 11102.1, Penal Code.

§994.8. Non-transferability of Certification.

The certification is not transferable or assignable to another individual or to an entity.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 11102.1, Penal Code.

§994.9. Duplicate Certification Letter.

The Department may issue a duplicate certification letter if the original has been lost or stolen, or for replacement of a damaged or destroyed letter. The DOJ will issue the duplicate letter upon written notice and satisfactory proof of such loss, theft, or destruction, or upon surrender of a damaged letter of certification for replacement. Such request for a duplicate certification letter must be accompanied by a fee of five dollars (\$5.00) in the form of a check or money order.

NOTE: Authority cited: Section 11102.1, Penal Code. Reference: Section 11102.1, Penal Code.

Article 4. Processing Times and Appeals

§994.10. Processing Time.

The following time standards will apply to the processing of applications for certification of individuals who take fingerprint impressions:

(a) Within 30 days after the date of receipt of an application for certification, the Department shall notify the applicant in writing that the application has been received and is being processed as complete, or that the application is deficient. If the application is deficient, the written notice will specify what specific additional information is required.

(b) Within 120 days after the receipt of a completed application, and other documents as specified in §994.5 of these regulations, the Department shall complete the processing of the application and forward a certification letter as specified in §994.6 of these regulations. If after processing the application the applicant has been determined to not meet the requirements for

certification, the Department shall notify the applicant that the application has been denied along with a statement of reasons on which the denial is based.

NOTE: Authority cited: Section 11102.1, Penal Code. Section 15376, Government Code.
Reference: Section 11102.1, Penal Code. Section 15376, Government Code.

§994.11. Processing Time Appeal Process.

(a) If the Department fails to meet the time period for concluding the processing of an application for certification, the applicant may apply in writing for a full refund of all applicable fees. The request must be received by the Department within 30 days from the date of service of the final decision granting or denying the certification.

(b) The Department shall respond within 10 days from the date of receipt of a request for refund.

(c) If the refund is denied by the Department, the applicant may directly appeal the denial in writing to the Attorney General. The appeal must be filed within 20 days from the date of service of the refund denial from the Department. The appeal shall set forth a concise statement of facts and chronology of events regarding the application for certification.

(d) An appeal in subsection (c) of this section will promptly be reviewed, and a decision will be issued within 30 days from the completion of any investigation which the Attorney General deems appropriate. The appeal in subsection (c) of this section will be decided in the applicant's favor if the Department has exceeded its maximum time period for the issuance or denial of the application for certification, and the Department has failed to establish good cause for exceeding this time period.

(e) The Department shall include information regarding this appeal process with all denial letters.

NOTE: Authority cited: Section 11102.1, Penal Code. Sections 15376 and 15378, Government Code. Reference: Section 11102.1, Penal Code. Sections 15376 and 15378, Government Code.

Article 5. Procedures for Denial of an Application, and Suspension or Revocation of an Existing Certification.

§994.12. Denial, Revocation or Suspension of Existing Certification.

(a) The Department may deny an application for certification, or may suspend or revoke an existing certification, for reasons as specified in Penal Code section 11102.1.

(b) When an application is denied, or an existing certification is suspended or revoked, the Department shall provide the applicant with a written notice which will specify all causes on which the denial, suspension, or revocation is based.

(c) When an application is denied, or when an existing certification is suspended or revoked, the applicant may file, within 30 days from the date of the written notification of the denial, suspension, or revocation, a written request for reconsideration by an Administrative Hearing Officer. Such request may include any and all evidence and legal arguments which the applicant feels is relevant to a reconsideration of the application, suspension or revocation. The Department shall provide the applicant with a written notice of its final decision within 60 days of the time the request for reconsideration is received.

NOTE: Authority cited: Section 11102.1, Penal Code. Section 11400.20, Government Code. Reference: Section 11102.1, Penal Code. Sections 11445.10 through 11445.60, Government Code.

§994.13. Administrative Hearing.

(a) If an administrative hearing is requested by the applicant, or the person with an existing certification that has been suspended or revoked, a hearing shall be held within 30 days unless a later date is requested by the person requesting the hearing. The hearing shall be conducted by an Administrative Hearing Officer appointed by the Department. The hearing officer shall not have participated in the decision to deny the application for certification or in suspending or revoking the existing certification that is the subject of the hearing before him or her.

(b) The person whose application has been denied or whose existing certification has been suspended or revoked shall be given the opportunity to be heard and to be represented by counsel during any hearing proceedings.

(c) An Administrative Hearing Officer shall disqualify himself or herself and withdraw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the Administrative Hearing Officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined by another Administrative Hearing Officer appointed by the Department.

(d) The proceedings at the hearing shall be reported by a certified shorthand reporter, except that, upon the consent of all the parties, the proceedings may be reported electronically.

NOTE: Authority cited: Section 11102.1, Penal Code. Section 11400.20, Government Code. Reference: Section 11102.1, Penal Code. Sections 11445.10 through 11445.60, Government Code.

§994.14. Time and Place of Administrative Hearing.

The Department shall notify the person requesting the hearing of the time and place of the hearing. Failure of the person requesting the hearing to appear at the hearing shall be deemed a withdrawal of the request for the hearing and the action of the Department shall be final.

NOTE: Authority cited: Section 11102.1, Penal Code. Section 11400.20, Government Code.
Reference: Section 11102.1, Penal Code. Sections 11445.10 through 11445.60, Government Code.

§994.15. Evidence Rules.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If the person requesting the hearing does not testify on his or her own behalf, he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

NOTE: Authority cited: Section 11102.1, Penal Code. Section 11400.20, Government Code.
Reference: Section 11102.1, Penal Code. Sections 11445.10 through 11445.60, Government Code.

§994.16. Proposed Decision.

The Administrative Hearing Officer shall prepare a Proposed Decision in such a form that it may be adopted as the decision in the case. A copy of the proposed decision shall be furnished to the person requesting the hearing and the Director no later than 20 days after the hearing. The Director may adopt the decision in its entirety or may decide the case upon the record with or without taking additional evidence. The person requesting the hearing shall be notified of the Director's decision within 30 days of the hearing or within 30 days of the taking of additional evidence, whichever is later.

NOTE: Authority cited: Section 11102.1, Penal Code. Section 11400.20, Government Code.
Reference: Section 11102.1, Penal Code. Sections 11445.10 through 11445.60, Government Code.